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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/718,131	11/20/2003	Julian Ross	ROSS 2864000	6992

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EXAMINER

JASTRZAB, KRISANNE MARIE

ART UNIT PAPER NUMBER

1744

DATE MAILED: 09/06/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/718,131

Applicant(s)

ROSS, JULIAN

Examiner

Krisanne Jastrzab

Art Unit

1744

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-30 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☐ Claim(s) ____ is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>3,12/04, 10,11/05</u> | 6) <input type="checkbox"/> Other: ____ |

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1-7 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The limitation to "an additive to vary the freezing point or boiling point of the water" is not sufficiently described nor enabled in the instant specification. Page 8 refers to an additive to "depress the freezing point of water", however, applicable additives were not cited, nor was there any reference to the boiling point of water not to increasing the freezing point. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-7 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

These claims are found to be vague and indefinite because it is unclear as to how the "additive" functions to "vary" the freezing or boiling points, and is therefor unclear as to what might actually constitute such an additive.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-7 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Koslow U.S. patent No. 4,548,730.

Koslow clearly teaches a personal, portable oxygen generator including a chamber for containing an oxygen generating composition and water physically separated with means to puncture the physical barrier and mix the two. The presence of an additive for controlling the heat generated is further disclosed and it is held that this additive meets the additive required by the instant claims. See column 3, column 5, lines 5-20, column 6, lines 1-10 and 53-68, column 7, lines 10-25 and 50 and column 8, lines 20-50.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-7 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-30 of copending Application No. 10/718,131. Although the conflicting claims are not identical, they are not patentably distinct from each other because they are of the same inventive concept, both claiming a portable oxygen generating apparatus employing water and chemicals to react therewith for the formation of oxygen in a vessel with means separating them until oxygen provision is desired.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claims 1-7 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-16 of copending Application No. 11/158618. Although the conflicting claims are not identical, they are not patentably distinct from each other because they are of the same inventive concept, both claiming a portable oxygen generating apparatus employing water and chemicals to react therewith for the formation of oxygen in a vessel with means separating them until oxygen provision is desired.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claims 1-7 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-11 of copending Application No. 11/158,648. Although the conflicting claims are not identical, they are not patentably distinct from each other because they are of the same inventive concept, both claiming a portable oxygen generating apparatus employing water and chemicals to react therewith for the formation of oxygen in a vessel with means separating them until oxygen provision is desired.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claims 1-7 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-8 of copending Application No. 11/158,696. Although the conflicting claims are not identical, they are not patentably distinct from each other because they are of the same inventive concept, both claiming a portable oxygen generating apparatus employing water and chemicals to react therewith for the formation of oxygen in a vessel with means separating them until oxygen provision is desired.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claims 1-7 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-74 of copending Application No. 11/158,865. Although the conflicting claims are not identical, they are not patentably distinct from each other because they are of the same inventive concept,

Art Unit: 1744

both claiming a portable oxygen generating apparatus employing water and chemicals to react therewith for the formation of oxygen in a vessel with means separating them until oxygen provision is desired.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claims 1-7 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-14 of copending Application No. 11/158,867. Although the conflicting claims are not identical, they are not patentably distinct from each other because they are of the same inventive concept, both claiming a portable oxygen generating apparatus employing water and chemicals to react therewith for the formation of oxygen in a vessel with means separating them until oxygen provision is desired.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claims 1-7 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-25 of copending Application No. 11/158,958. Although the conflicting claims are not identical, they are not patentably distinct from each other because they are of the same inventive concept, both claiming a portable oxygen generating apparatus employing water and chemicals to react therewith for the formation of oxygen in a vessel with means separating them until oxygen provision is desired.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claims 1-7 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-15 of copending Application No. 11/158,993. Although the conflicting claims are not identical, they are not patentably distinct from each other because they are of the same inventive concept, both claiming a portable oxygen generating apparatus employing water and chemicals to react therewith for the formation of oxygen in a vessel with means separating them until oxygen provision is desired.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claims 1-7 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-8 of copending Application No. 11/159079. Although the conflicting claims are not identical, they are not patentably distinct from each other because they are of the same inventive concept, both claiming a portable oxygen generating apparatus employing water and chemicals to react therewith for the formation of oxygen in a vessel with means separating them until oxygen provision is desired.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.


Conclusion

Art Unit: 1744

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Krisanne Jastrzab whose telephone number is 571-272-1279. The examiner can normally be reached on Mon.-Thurs. 6:00am-4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gladys Corcoran can be reached on 571-272-1214. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


Krisanne Jastrzab
Primary Examiner
Art Unit 1744

September 5, 2006